

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1902

SPONSOR: Regulated Industries Committee and Senator Bennett

SUBJECT: Home Inspection Services

DATE: April 9, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kruse</u>	<u>Maclure</u>	<u>CM</u>	<u>Fav/1 amendment</u>
2.	<u>Sumner</u>	<u>Imhof</u>	<u>RI</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>CJ</u>	_____
4.	_____	_____	<u>JU</u>	_____
5.	_____	_____	<u>AGG</u>	_____
6.	_____	_____	<u>AP</u>	_____

I. Summary:

This bill requires the Department of Agriculture and Consumer Services (DACS) to adopt rules incorporating standards of practice from a home inspector organization including minimum standards required for a home inspector to claim to be a “certified home inspector.” The bill also requires home inspectors to make certain disclosures and reports to a customer, provides that failure to comply with the bill’s provisions constitutes a deceptive and unfair trade practice, and lists certain exemptions.

This bill creates section 501.935, Florida Statutes.

II. Present Situation:

Current Florida law does not license or regulate the practice of home inspectors. The existence and level of home inspector regulation varies state-to-state. Georgia law requires home inspectors to provide written documents to customers containing certain information, including the scope of the inspection, the structural elements and systems to be inspected, that the inspection is a visual inspection, and that the home inspector will notify, in writing, the person on whose behalf such inspection is being made of any defects noted during the inspection.¹ Alabama rule requires individuals performing home inspections to be licensed by the Alabama Building Commission.² The Alabama Standards of Practice and Code of Ethics are adopted from the American Society of Home Inspectors (ASHI) Standards of Practice and Code of Ethics.³

¹ Ga. Code Unann. s. 8-3-331 (2001).

² Alabama Building Commission, Alabama Home Inspectors Registration Program, *Chapter 170-x-24-.03*, available at <http://www.bc.state.al.us/chapter170x24.htm> (last visited March 30, 2003).

³ *Id.* at *Chapter 170-x-25-.02*, available at <http://www.bc.state.al.us/chapter170x25.htm> (last visited March 30, 2003).

The Alabama law also outlines educational and experiential requirements to become licensed, sets license fees and insurance requirements, and defines penalties under which licensure may be suspended or revoked.⁴

Inspections

Generally, the home inspector provides an inspection to a buyer just prior to the sale of the home. The home inspector looks for visually obvious problems with the home and reports any to the buyer who may consider having them corrected by the seller before closing the sale. A home inspector is not required to report to the customer possible conflicts of interest and is under no obligation to maintain the confidentiality of a home inspection report.

Department of Agriculture and Consumer Services

The department currently monitors or regulates approximately 100 types of businesses or areas of the Florida economy.⁵ The department maintains complaint reports for regulated professions (e.g. pawn broking) and in some cases has the authority to fine a member of a regulated profession (e.g. pest control) in violation of a rule or statute.⁶

Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act (FDUPTA) is designed to protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.⁷ A willful violation of this act may incur a civil penalty of not more than \$10,000. Willful violations occur when the person knew or should have known that his or her conduct was unfair or deceptive.⁸ Individuals aggrieved by a violation of this act may seek a declaratory judgment that an act or practice violates this act and to enjoin a person from continuing the deceptive or unfair act. An individual harmed by a person who has violated this act may also seek actual damages from that person, plus attorney's fees and court costs.⁹

III. Effect of Proposed Changes:

This bill creates s. 501.935, F.S., governing home inspection services.

Subsection (1) of new s. 501.935, F.S., describes the legislative intent of the statute. This subsection points out the differences between a home inspection and other inspections, such as a code enforcement inspection, and also states that it is in the public interest to require the disclosure of information useful to a consumer in choosing a home inspector.

⁴ Al. Code s. 34-14B-1 – 9 (1975).

⁵ Florida Department of Agriculture and Consumer Services, *Licensing-Permits-Registrations*, available at <http://doacs.state.fl.us/onestop/#A> (last visited March 27, 2003).

⁶ Section 482.161(1), F.S.

⁷ Section 501.202(2), F.S.

⁸ Section 501.2075, F.S.

⁹ Section 501.211(1) and (2), F.S.

Subsection (2) defines certain terms including “home inspector”, “home inspection.”, and “Code Certified. A “home inspector” means “any person who provides or offers to provide a home inspection for a fee or other compensation.” A “home inspection” means “an examination, done for compensation, of the mechanical and physical components of a home through visual means and operation of normal user controls, without necessarily the use of any mathematical or engineering science. The inspection may include, but is not limited to, examination of the readily visible portions of the structural, electrical, heating, central air-conditioning, roofing, plumbing, insulation and ventilation, cladding systems, doors and windows, interior surfaces, and chimneys and fireplaces.” “Code Certified” defines the means by which the home inspector becomes code certified.

Subsection (3) requires the Department of Agriculture and Consumer Services (DACS) to adopt by rule the Standards of Practice of the American Society of Home Inspectors (ASHI) or the standards of a similar consensus-based home inspection standard, including minimum standards required for a home inspector to claim to be a “certified home inspector.” The standard adopted must require a home inspector to have experience and successfully pass a home inspection examination. It also states that the bill does not create or impose a bureau or other state agency to regulate home inspectors and prohibits DACS from licensing, collecting fees, or filing administrative complaints against a home inspector. A consumer could contact DACS and check for complaints filed against a particular home inspector, but no administrative action could be taken against a home inspector by DACS.

Subsection (4) provides exemptions from the bill to:

- construction contractors;
- architects;
- engineers;
- building code administrators, plans examiners, building code inspectors;
- certified real estate appraisers, licensed real estate appraisers, registered assistant real estate appraisers; and
- an inspector whose report is being provided to, and is solely for the benefit of, the Federal Housing Administration or the Veterans Administration.

Subsection (5) states that a home inspector must provide certain disclosures to a customer such as:

- a written list of the home inspector’s credentials, including any board certification;
- a disclosure describing, among other things, what the home inspection covers and that the inspection will not necessarily reveal any latent or concealed defects;
- a written disclosure stating any conflicts of interest or relationship the home inspector has which may affect the client; and
- a written statement or agreement declaring the home inspector’s scope of services, limitations, terms, and conditions regarding the home inspection.

Subsection (6) states that a home inspector must provide a written home inspection report to the customer within 3 working days of the inspection, and that relevant portions of the report must be provided by the buyer to the seller upon request if the buyer uses the report to void, modify, or refuse to close on a home sale contract.

Subsection (7) lists five prohibitions for home inspectors including a prohibition against accepting any commission, allowance, gift, or other thing of value from another party dealing with a client of the inspector which relates to the inspection or conditions reported by the inspector. It also prohibits a home inspector from performing an inspection on any home that has not received a certificate of occupancy, unless that home inspector is code certified.

Subsection (8) states that a failure to comply with any provision of this bill constitutes a deceptive and unfair trade practice under the Florida Deceptive and Unfair Trade Practices Act, part II of ch. 501, F.S. A cause of action may be brought under the act in addition to any other remedy provided by law. Also, a court may enjoin any person who has substantially failed to comply with the bill's provisions from using the title "board-certified home inspector" for a reasonable period of time and may require the person to inform a potential client of such injunction. The term "reasonable period of time" is not defined. It appears a court could prevent someone from using the term "board-certified home inspector" when that person does not meet the bill's standards or the court could prevent a board-certified home inspector from advertising such certification when the home inspector has not maintained the educational or testing requirements necessary to maintain the certification.

Subsection (9) requires DACS to receive any complaints regarding home inspectors and to compile statistics regarding those complaints.

The bill takes effect July 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill requires the Department of Agriculture and Consumer Services (DACS) to adopt rules relating to the standards of practice for home inspectors and receive complaints, although the department will have no authority to regulate home inspectors under the provisions of the bill. Home inspectors will be prohibited from inspecting homes that have not been sold at least once, which may somewhat reduce the market for home inspectors. Although, according to the Florida Home Inspector's Alliance, home inspectors generally do not inspect newly constructed homes, some home inspectors have additional qualifications relating to home construction, and a home buyer may hire one to inspect the new home. In Florida, consumers have limited recourse for damage to new homes due to the negligence of city inspectors in fulfilling their inspection duties.¹⁰ Without a home inspection by a home inspector, the home buyer's ability to review some of the areas covered by the city inspectors may be reduced.

Customers will receive certain disclosures and reports from home inspectors that will, among other things, inform them of any conflicts of interest the home inspector may be under, and a potential customer will be able to check for complaints filed against home inspectors with DACS.

C. Government Sector Impact:

A DACS bill analysis indicates a revenue impact of \$55,679 in the first year (\$52,417 in FY 04-05, and \$53,692 in FY 05-06) to pay a consultant to review and analyze the Standards of Practice of the American Society of Home Inspectors and to compare any other consensus-based home inspection standards submitted for certification to the department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

¹⁰ See *Trianon Park Condominium Assoc., Inc. v. City of Hialeah*, 486 So. 2d 912 (Fla. 1985) (finding no liability of city for damage to condominium due to city inspector negligence).